

March 1, 1995

P.S. Protest No. 95-01

DATTEL REALTY COMPANY

Solicitation No. 482980-95-A-0046

DIGEST

Protest against the selection of a higher-priced offer for the construction and lease of a post office is denied where the solicitation did not require award to the lowest-priced offeror and the record fails to establish that the contracting officer's evaluation determination was arbitrary or capricious.

DECISION

Dattel Realty Company protests the award of a contract for the construction and lease of a post office in Roland, OK, to H. L. Hilton & Associates, Inc.

On October 20, 1994, the Dallas, TX, Facilities Service Office issued solicitation 482980-95-A-0046 for the construction and lease of the Roland main post office. The solicitation described the preferred area for the facility as "[w]ithin the City Limits of Roland or one mile from the existing postal facility." The facility was to comprise approximately 4,725 square feet of interior space on a lot of at least 40,850 square feet. The initial fifteen year lease term was to be followed by three five-year renewal options. The solicitation provided as follows concerning the basis for award:

AWARD: Any award made under this solicitation will be made to the responsible offeror whose proposal for the cost, location, lease terms, overall project economics, operational benefits, past job performance, and other factors is most advantageous to the Postal Service. The Postal Service reserves the right to negotiate with any or all offerors as to any or all rental rates, or other terms and conditions of the proposal; to secure proposals in addition to those offered initially in response to this solicitation, without waiving its right to accept the proposal as submitted; or to reject any and all proposals.

Offers for four different sites were received November 21.¹ Hilton's offer for a site on the north side of U.S. Highway 64 near Roland's south-east boundary and Dattel's offer for a site on the east side of Roland Avenue near the Roland town hall were determined to be the most advantageous and the second most advantageous, respectively.² Hilton's proposal provided for an annual rental of \$51,000 per year for the initial term, with rentals increasing in the option years. Dattel's proposal provided for rentals somewhat lower than Hilton's both for the initial term and for the renewal options. Both offered rentals lower than the Postal Service's estimate.

After negotiations which led to slight reductions in the rental rates for two of the option periods, the Postal Service awarded the lease to Hilton on December 28. Dattel's protest was received on January 9. The protest contends that the award was not in the best interest of the Postal Service, since Dattel's offer was lower than Hilton's both as to the initial term and the renewal terms.³ The contracting officer's brief statement responding to the protest recites that location, one of the selection criteria set out in the solicitation, was the basis for the award.

The protester supplemented its protest with correspondence from the Administrator of the town of Roland expressing objections to the Hilton site or any site on Highway 64 for safety reasons and inquiring whether the town could participate in the protest. The protester was advised that the town was not an affected offeror, and that the limited circumstances in which someone not an affected offeror might be considered an interested party did not appear to apply, but that the protester was free to include the town's correspondence in its submissions.

In view of the town's objections to the Hilton site, and the failure of the documentation accompanying the contracting officer's statement to explain why the site was believed to be

¹ The documents which accompany the contracting officer's statement are inconsistent with respect to whether two sites (according to the synopsis of offers) or one site (the negotiator's report) were "rejected due to hazardous location."

² Hilton's offer proposed a 4,725 square foot building on a 36,225 square foot lot. Dattel's offer proposed a 4,725 square foot building on a 37,275 square foot lot. Neither the contracting officer nor the protester discuss these offers' failures to meet the solicitation's requirements as to minimum site size.

³ The protest also challenges the "ambiguity" of the solicitation's description of the preferred area, contending that "[t]he preferred area should have been more specifically delineated with noted boundaries."

As we advised the protester in acknowledging the protest, this element of the protest is untimely, since any ambiguity in the description of the preferred area should have been apparent on the face of the solicitation, and thus could have been the subject of a timely protest only prior to the time set for the receipt of offers. Procurement Manual (PM) 4.5.4 b. Accordingly, this portion of the protest must be dismissed.

Although we do not reach the merits of the issue, we note that the description is not inherently ambiguous. Sites will be within the preferred area if they meet either of its criteria. The two parts of the description are not inconsistent since some portions of the town are more than one mile from the current post office, while a circle with a one-mile radius centered on the current site would include other areas outside the town boundary.

in the best interest of the Postal Service, the contracting officer was invited to supplement his report. He did so in a letter to the protester which provides, in part, as follows:

Price was only one of the factors evaluated. The location of the selected site is considered to become the center of the business area within the next five to eight years, as this area is the only direction of growth to this area. Operational benefits were also identified as a part of the selection criteria, and were considered to be more advantageous at the selected site.

* * *

[Dattel's site is] located approximately one mile north of the Roland business district. . . . [Hilton's site] is located approximately 3/8[th] of a mile from the current center of the business district. Considering the growth patterns of the business area, [Hilton's site] is located in what is considered to become the center of the business area within the next five to eight years.

* * *

[Dattel's site] was considered to provide a good buildable location[;] however, the site is located approximately one mile north of the business district. [Hilton's site] provided an excellent location relative to surrounding businesses, hospital, doctor offices and access for customers and operations.

[Hilton's site] was considered and selected by the Oklahoma District operational personnel since it provided the best location for current and future operational needs, and provided the best service to our customers.

The protester responded to the contracting officer's statement by asserting that the contracting officer's contention that the southeast corner of Roland "is the only growth area is inaccurate and contrary to the current planned growth of the city." Further, the protester asserts that "the Town will not allow permits for water, sewer, utilities for construction on the site selected by the USPS." The protester's comments were accompanied by various communications from the town of Roland reflecting its clear preference for Dattell's site and the similar results of a telephone survey of town residents.

DISCUSSION

The evaluation criteria set out in the solicitation did not require the award of the lease to the lowest-priced offeror. Rather, they allowed for the consideration of the other enumerated factors in addition to cost. The contracting officer's determination of the preferred site was essentially a matter of technical evaluation. Such technical decisions will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. Additionally, the protester bears the burden of overcoming the "presumption of correctness" which accompanies the statements of contracting officers. *Dawson Construction Co., Inc.*, P.S. Protest No. 91-47, September 25, 1991; *accord, Delbe Real Estate Company*, P.S. Protest No. 91-76, April 3, 1992.

While the record in this protest evidences the disagreement of the protester and of officials

and residents of the town of Roland with the contracting officer, that disagreement does not establish the unreasonableness of the contracting officer's decision that the Hilton site was preferable to the Dattel site by reason of its location, and that the benefits of that location justified the site's additional cost. We may not substitute our judgment for those conclusions.⁴

The protest is dismissed in part and denied in part.

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Contract Protests and Policies

⁴ Contrary to the protester's contentions, nothing in its submissions persuasively demonstrates the inaccuracy of the contracting officer's description of the likely future growth of the town. One letter, from the president of the Roland Planning Commission, appears consistent with the contracting officer's view, at least in part. While it criticizes the Hilton site's location in a traffic congested area where "too many accidents have already occurred," it goes on to describe the site as "one of the last prime locations left for new businesses to choose from. . . . [O]ur town is growing in leaps and bounds and many new companies are looking at our town for a new location and we need the revenue from these businesses to be able to maintain our growth rate."